

Table 1. How to Raise \$1 Trillion (dollar figures in billions, 2010 FY)				
	<u>Revenue</u> (<i>italicized</i> #s are especially soft)	<u>Cum'ive</u> <u>Revenue</u>	<u>Description</u>	<u>Revenue</u> <u>estimate</u> <u>source note</u>
1. CO ₂ Tax	\$100	\$100	\$20 per ton tax on carbon, reimbursed to those who extract carbon from the air	shelf project ¹
2. Mortgage interest	\$94	\$194	Current tax expenditure less 10% for symbolic and small allowance.	JCT ²
3. Transfer pricing	\$83	\$277	Limitations on shift on corporate income to foreign sources	³
4. Gas tax	\$69	\$346	23 cent tax per gal on petroleum, times 300 billion gallons annual consumption. ⁴	
5. Tax Gap	\$70	\$416	20% of the tax gap by raising reporting standard to more likely than not, requiring taxpayer correction of errors on amended returns, web based tax liens, withholding on interest and sales, expanded employee classification, and hidden offshore accounts.	20% of Tax Gap ⁵
6. Repeal lower rate for capital gain, except for stock	\$51	\$467	Repeal lower rate for capital gain, except for sale of C corporation shares, because capital gain now supports standard of living and can be accessed by living beneficiaries. ⁶	⁷

¹ Ian Parry, *Raise \$100 Billion from a \$20 CO₂ Tax*, 123 TAX NOTES 243 (2009)

² STAFF OF THE JOINT COMMITTEE ON TAXATION, ESTIMATES OF FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2009-2013, JCS 1-10 (Jan. 11, 2010) (hereinafter "JCT"). All figures use 2010 year.

³ Kimberly Clausing, "Multinational Firm Tax Avoidance and U.S. Government Revenue" (April 2008)(estimating \$83 billion revenue from transfer pricing reform)

⁴ If there is zero behavioral response a 24 cent tax would raise \$71 billion: 300 billion gal. (see *supra* note 16) times 24 cents = \$71 billion. A 10% drop in consumption of gasoline would require a 26.4 cent tax per gal. to raise \$71 billion.

⁵ IRS' most recent estimate of the tax gap is \$345 billion for 2001. IR-2006-28, Feb. 14, 2006.

⁶ Calvin H. Johnson, *Corporate Distributions from Earnings and Beyond*, 127 TAX NOTES 813 (May 17, 2010) <http://www.utexas.edu/law/faculty/calvinjohnson/corporate-distributions-from-earnings-beyond-05-17-2010-tax-notes.pdf>. The proposal here reflects a change in conclusion on the ground that it is too complicated to try to enforce reinvestment and inappropriate to give special treatment for old capital. Other shelf projects within the series on capital gains and cited (*id.*) would take away capital gain on intangibles, compensation, and funds not reinvested, and repeal the asymmetrical treatment in IRC §1231.

⁷ JCT for lower rate on capital gain, taking out dividends (SOI Individual Returns)) and stock as percentage of taxable estate (IRS Statistics of Income, Estate Returns Filed in 2007 (hereinafter "SOI Estates")."

7. Capitalize intangibles	\$50	\$517	Capitalize prepayments, investigation costs, product design, patent costs, software development, and film. ⁸	
8. Mark to Market	\$50	\$567	Mark to market for all derivatives and financial instruments for which there is an established market. ⁹	
9. Tax planning and controversy	\$43	\$610	Disallow costs of tax planning, tax determination and controversy to match tax free revenue in reduction in reduction of tax. ¹⁰	Volker Commission as to costs ¹¹
10. Fringe benefits	\$42	\$652	Meals always taxed, excise tax on costs of hard to value employee fringe benefits including gyms and cafeterias. ¹²	JCT for differing fringes
11. Repeal artificial basis for heirs.	\$37	\$690	Step up in basis at death is fake cost, inconsistent with “profit,” and which allows wastrel heir to consume without tax. ¹³	OMB ln 72 with adjustments ¹⁴
12. Deferrable foreign subs	\$35	\$724	Current tax of active controlled foreign income of subsidiaries	OMB line 6
13. Local taxes	\$34	\$758	End deduction of local Tiebout taxes that have presumptive quid-pro-quo. ¹⁵	JCT

⁸ The rationales for capitalization are in Calvin H. Johnson *Omnibus Capitalization Proposals*, 124 TAX NOTES 1121 (Sept 14, 2009) [<http://www.utexas.edu/law/faculty/calvinjohnson/Omnibus-Capitalization.pdf>]; Calvin H. Johnson, *Simplification by Repeal of the One-Year Rule for Prepayments*, 124 TAX NOTES 809 (August 24, 2009); Calvin H. Johnson, *Capitalize Costs of Software Development*, 124 TAX NOTES 603 (August 10, 2009), Calvin H. Johnson, *The Effective Tax Ratio and the Undertaxation of Intangibles*, 121 TAX NOTES 1289 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/effective-tax-ratio.pdf>] criticized continued reliance on accounting income given the treatment of intangibles.

⁹ David S. Miller, *A Progressive System of Mark-to-Market Taxation*, 121 Tax Notes 213 (Oct. 13, 2008) would mark financial instruments to market. Yarom Keinan, *Mark to Market for Derivatives*, 128 TAX NOTES 1269 (Sept. 20, 2010). Lower capital gains rates are primarily an incentive for realization, so that the case for capital gain within mark to market is weaker.

¹⁰ Calvin H. Johnson, *No Deductions for Tax Planning and Controversy Costs*, 129 TAX NOTES 333 (Oct 18, 2010), [<http://www.utexas.edu/law/faculty/calvinjohnson/TaxPlanning.pdf>].

¹¹ The President’s Economic Recovery Advisory Board: The Report on Tax Reform Options: Simplification, Compliance, and Corporate Taxation 42, 46, 65 (Aug. 27, 2010), http://www.whitehouse.gov/sites/default/files/microsites/PERAB_Tax_Reform_Report_for_final_vote.pdf

¹² Calvin H. Johnson, *An Employer-level Proxy Tax on Fringe Benefits*, 123 Tax Notes 483 (April 27, 2009) [<http://www.utexas.edu/law/faculty/calvinjohnson/employer-level-proxy-tax.pdf>]; Richard Schmalbeck & Jay A. Soled, *Elimination of the Deduction for Business Entertainment Expenses*, 123 TAX NOTES 757 (May 11, 2009).

¹³ Calvin H. Johnson, *Elephant in the Parlor: Repeal of Step-up in Basis at Death*, 121 TAX NOTES 1181 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/elephant-in-the-parlor.pdf>]

¹⁴ OMB, US Budget FY 2011, Analytical Perspectives 299, Table 19–1. Estimates of Total Income Tax Expenditures for Fiscal Years 2009–2015, at 209, line 72 (hereinafter “OMB”). All figures use 2010 figures and combine individual and corporate amounts. The revenue estimate takes the line 72 figure for repeal of section 1014, and enhances it by 10% to reflect a proposal made here that heirs bear a higher tax on sale than founders. Tax on heirs has less effect on Founders’ incentives, but gives the same money to the government. The revenue estimate is then reduced by 25%, to reflect that 25% of assets of estates are publicly traded stock and another proposal on the list would mark publically traded stock to market. SOI Estates

14. Insurance build up	\$31	\$769	Tax investment return on insurance policies, but exclude actuarial gain. ¹⁶	JCT
15. Estate tax	\$25	\$814	Estate tax collection from zero in 2010 valuation reform	SOI Estates
16. Rental value >\$1 mil	\$24	\$838	Tax value of non-income use of real property worth in excess of \$1 million ¹⁷	¹⁸
17. Repeal house gain exclusion	\$24	\$862	End exclusion of cash gain from sale of house	
18. Ain't charity	\$20	\$882	Limit charitable deduction to basis, \$1000/year threshold when taxpayer attends the services or performances. ¹⁹	²⁰
19. Municipal bond exclusion	\$16	\$898	Repeal exemption for municipal bonds but buy out issuers.	²¹
20. Conform depreciation to debt.	\$15	\$913	Economic depreciation, including no negative capital accounts (e.g. basis lower than debt outstanding) ²²	²³
21. Domestic production	\$12	\$925	Repeal exclusion of 9% with minimal connection to domestic production.	JCT
22. Repeal energy credits	\$11	\$936	Repeal ethanol and other tax credits	JCT
23. Replace corporate income tax.	\$10	\$946	Replace §11 tax on accounting income with 8/10ths percent annual tax on market capitalization Revenue estimate is twice as high but overlaps with other reforms. ²⁴	

¹⁵ In theory, redistributional taxes in which the benefit goes to other taxpayers should be deductible, but benefits taxes in which the taxpayer gets benefits from the taxes should not. There is no shelf project pending on disallow local taxes.

¹⁶ Calvin H. Johnson, Andrew Pike and Eric Lustig, *Tax on Insurance Buildup*, 122 TAX NOTES 665 (February 2, 2009), [<http://www.utexas.edu/law/faculty/calvinjohnson/tax-on-insurance-buildup.pdf>].

¹⁷ Calvin H. Johnson, *Taxation of the Really Big House*, 122 TAX NOTES 915 (February 16, 2009) [<http://www.utexas.edu/law/faculty/calvinjohnson/taxation-of-the-really-big-house.pdf>].

¹⁸ Real property held by estates >\$2 mil (SOI Estates) grossed up by mortality (Statistical Abstracts of US Table 105), imputed return at long term applicable federal rate, and tax at 35%.

¹⁹ Calvin H. Johnson, *Ain't Charity: Disallowing Deductions for Kept Resources*, 128 TAX NOTES 545 (Aug. 2, 2010) [http://www.utexas.edu/law/faculty/calvinjohnson/aint_charity.pdf].

²⁰ JCT figures total \$44.8 for all charity

²¹ Calvin H. Johnson, *Repeal Tax Exemption for Municipal Bonds*, 117 TAX NOTES 1259 (2007), [<http://www.utexas.edu/law/faculty/calvinjohnson/repeal-exempt-muni-bonds.pdf>]

²² Calvin H. Johnson, *Don't Let Capital Accounts Go Negative*, TAX NOTES (forthcoming October 2010)

²³ JCT on restricting to alternate depreciation is \$13.6 billion. Limitations on "negative capital accounts" are stricter than alternative depreciation and have broader scope.

²⁴ Calvin H. Johnson, *Replace the Corporate Tax with a Market Capitalization Tax*, 117 TAX NOTES 1082 (2007) [<http://www.utexas.edu/law/faculty/calvinjohnson/replace-corporate-tax.pdf>].

24. Contributions to capital from nonowner	\$10	\$956	Public funding of sports stadiums, factories, and location incentives are now treated as exempt capital, but they are “income” in ordinary sense because they improve net worth. ²⁵	
25. TARP tax	\$9	\$965	15/100 th tax on bank liabilities to cover government losses from TARP ²⁶	
26. Limit qualified plans	\$8	\$973	Limit qualified plan contributions to actuarial amount needed for \$50,000 in retirement	10% of JCT on qualified plans
27. Public stock in merger	\$5	\$978	Treat publicly traded stock as cash equivalent when received in merger ²⁷	²⁸
28. Repeal LIFO	\$4	\$982	LIFO inventory excludes real gains	JCT
29. Repeal Roths	\$4	\$986	Roths are not equivalent to consumption tax in rising revenue or known excess returns. ²⁹	JCT
30. Tax services receivables	\$3	\$989	Service businesses extending credit would be taxed on receivable to prevent tax floats. ³⁰	
30. No second set of low brackets	\$3	\$992	Section 11 gives second set of low rate brackets by merely incorporating.	JCT
31. Deferred sales	\$2	\$995	Treat first cash as boot, no capital gain after first year. ³¹	Half of JCT
32. Like kind exchanges	\$2	\$993	Tax off-stage cash ³²	JCT
33. Oil and gas	\$2	\$995	End expensing of intangible drilling, percentage depletion, pool of capital, fast geological exploration write offs. ³³	JCT

²⁵ Calvin H. Johnson, ‘Contributions to Capital’ from Nonowners, 126 TAX NOTES 1127 (2010) [<http://www.utexas.edu/law/faculty/calvinjohnson/contributions-to-capital-from-nonowners-03-01-2010-tax-notes.pdf>].

²⁶ White House explanation of Financial Crisis Responsibility Fee , http://www.whitehouse.gov/sites/default/files/financial_responsibility_fee_fact_sheet.pdf

²⁷ Calvin H. Johnson, *Taxing the Publically Traded Stock in a Corporate Acquisition*, 124 TAX NOTES 1363 (Sept. 28, 2009) [<http://www.utexas.edu/law/faculty/calvinjohnson/taxing-the-publicly-traded-stock-09.28.09.pdf>].

²⁸ \$1 trillion stock-only mergers over 24 years 1977-2000 (Matthew Rhodes-Kropf et al., ‘Valuation Waves and Merger Activity: The Empirical Evidence,’ 77 J. of Fin. Econ. 561), then of the 1/24th for one year, it is assumed that half is gain taxed at 15%.

²⁹ Calvin H. Johnson, *Repeal Roth Retirement Plans To Increase National Savings*, 128 TAX NOTES 773 (August 16, 2010) [<http://www.utexas.edu/law/faculty/calvinjohnson/repeal-roth.pdf>].

³⁰ Calvin H. Johnson & Gregg D. Posky, *End Tax Floats by Taxing Receivables or Deferring Payables*, 129 TAX NOTES 1243 (Dec. 13, 2010) [<http://www.utexas.edu/law/faculty/calvinjohnson/Receivables.pdf>].

³¹ Calvin H. Johnson, *Deferred Payment Sales*, 120 TAX NOTES 157 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/deferred-payment-sales.pdf>].

³² Calvin H. Johnson, *Impose Capital Gains Tax on Like-Kind Exchanges*, 121 TAX NOTES 475 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/like-kind-exchanges.pdf>].

34. Repeal ESOPS	\$2	\$999	Undiversified pension investments undercut retirement security and do harm. ³⁴	OMB line 154
35. Small business stock	\$1	\$1000	Small business corporation stock benefits lead to abuses of funding of losing projects.	JCT

³³ Calvin H. Johnson, *Accurate and Honest Tax Accounting for Oil and Gas*, 125 TAX NOTES 575 (Nov. 2, 2009) <http://www.utexas.edu/law/faculty/calvinjohnson/accurate-and-honest-tax-acct-for-oil-and-Gas-11-02-2009-tax-notes.pdf>].

³⁴ Andrew Stumpff and Norman Stein, *Repeal Tax Incentives for ESOPS*, 125 TAX NOTES 337 (Oct. 19, 2009).

Smaller Revenue Items or No Revenue Estimate Available.

A revenue crisis is an opportunity for Treasury to do the right thing on 200 projects. Table 2, below, presents a list of projects with a revenue estimate of under \$1 billion per project. The projects, in some cases, might be worth over a \$1 billion, but I am unable to do a responsible revenue estimate that high. The smaller revenue projection projects should still be done. The tax system needs hundreds of repairs to support a fairer and more efficient tax base, but the smaller repairs will not get done unless the staff work is done now in preparation. If a project raises *only* 250,000,00.00, for instance, a deficit of \$1.3 trillion can be met only with 5200 such projects, which a project completed every other week for 200 years. Only once in a generation or in a crisis does the government get a fair chance to make necessary repairs to the tax system. If the tax base is not repaired in the coming crisis, it will be a long time before the chance comes again.

Table 2. Small and no estimates revenue projects	
Item	Description
1. "Green Stamps" reserves	Payments for future customer incentives are deducted years before payment in violation of time value of money.
2. Capital Construction funds	World War II-era incentives for investment in domestic ship building remain intact long after the rationale for adoption has disappeared.
3. Repeal Recurring costs exemption from economic performance accrual	Section 461(h)(3) of the Code allows current deduction of next year's expenses if the payments are "recurring." "Recurring" is part of "steady state fallacy" and does not justify deduction of next year's expenses not yet expired. Probably > \$1 billion.
4. Repeal common trust funds	Banks got passthrough system adopted before partnership tax was adopted to include anti-abuse provisions. The system is now a "living fossil." Banks need to use the partnership tax system instead. ³⁵
5. Closing deferred revenue accounts	A set of multi-million dollar shelters sold in late 1990s and early 2000's worked only because cash received was not taxed because it was deferred income and then the deferred income was never brought as gain or deduction of basis. This violates fundamental accounting balancing. ³⁶
6. End transfer of basis in wash sales	Wash sale rules are supposed to be a remedy to prevent abuse, but the rules are exploited as a way to transfer basis from one related entity to another. The suspended loss needs to stay with the same taxpayer. ³⁷ Probably >\$1 billion
7. Preserving basis	Basis should not be deducted if the property retained has a value in excess of basis ³⁸ This is part of the fundamental norm that if the tax accounting reflects economic income, then basis would not drop below net present value of the

³⁵ Calvin H. Johnson, *Common Trust Funds: The Living Fossil of Passthroughs*, 128 TAX NOTES 103 (2010) [<http://www.utexas.edu/law/faculty/calvinjohnson/common-trust-funds-living-fossil-of-passthroughs-04-05-2010-tax-notes.pdf>].

³⁶ Calvin H. Johnson, *Closing Deferred Revenue*, 121 TAX NOTES 965 (2008)

[<http://www.utexas.edu/law/faculty/calvinjohnson/closing-deferred-revenue.pdf>].

³⁷ Cf. Calvin H. Johnson, *Wash Sales with Replacement by Related Parties*, 120 TAX NOTES 1325 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/wash-sales-with-replacement.pdf>] covers part of the problem, but not all of the transference-of-basis cases

³⁸ Calvin H. Johnson, *Casualty and Business Losses When Basis Has Not Been Lost*, 120 TAX NOTES 357 (2008), [<http://www.utexas.edu/law/faculty/calvinjohnson/casualty-and-bus-losses-when-basis.pdf>].

	investment. Probably > \$1 billion.
8. Taxpayer identification of basis.	When stock is sold, but fungible stock is retained, the gain should be calculated to maximize gain to bring basis up to value. ³⁹ Allowing taxpayer to identify certificates sold is meaningless except to understate taxable gain. Probably > \$1 billion
9. Cashing out on gain.	Short sales and issuance of option should be boot – gain first - if the taxpayers hold underlying property. ⁴⁰ Probably >\$1 billion
10. Retiring Partners	Create basis not deductions for buyouts of retiring partners. ⁴¹ Probably > \$1 billion.
11. Third party compensation.	Tax Court decision allows plaintiff's lawyers to receive compensation backed by insurance company, although cash method taxpayers usually pay tax on funded promises to pay. ⁴² Probably > \$1 billion.
12. Goodwill as ordinary asset.	The combination of ordinary deduction for input and capital gains rates for sales gives strong negative tax to goodwill and other intangibles. ⁴³ Probably >\$1 billion
13. Partnership capital gain	Distributions from expanded- definition collapsible partnerships need to be ordinary income. ⁴⁴
14. Extension of UBIT	Unrelated trade or business income tax needs to be extended to ESOPs and government affiliated entities to prevent shift of taxable income to exempt status and prevent use of tax exempt entities as tax sink to absorb income in a transaction. ⁴⁵
15. Deny deduction of credit risk interest	Deny deduction for credit risk interest, ⁴⁶ Stop exemption from \$1 million cap on compensation deduction for stock options. ⁴⁷

³⁹ Calvin H. Johnson, *End Identification of Stock Certificates*, 119 TAX NOTES 1171 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/end-identification-of-stock-certificates.pdf>].

⁴⁰ Calvin H. Johnson, *End Tax-Free Monetization of Wealth*, 119 TAX NOTES 1361 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/end-tax-free-monetization.pdf>].

⁴¹ Philip Postlewaite and Adam Rosenzweig, *Anachronisms in Subchapter K of the Internal Revenue Code – Is it Time to Part With Section 736*, 100 NORTHWESTERN L. REV. 379 (2006).

⁴² Gregg D. Polsky, Brant J. Hellwig, *Close the Yield Exemption Loophole Created by Childs*, 123 TAX NOTES 1141 (May 18, 2009)

⁴³ Calvin H. Johnson, *Sale of Goodwill and Other Intangibles as Ordinary Income*, 118 TAX NOTES 321 (2008) [<http://www.utexas.edu/law/faculty/calvinjohnson/sale-goodwill-other-intangibles-as-income.pdf>].

⁴⁴ Karen C. Burke, *Collapsible Real Estate Partnership*, 120 TAX NOTES 593 (July 21, 2008)

⁴⁵ Calvin H. Johnson and Ellen Aprill, *UBIT to the Defense! ESOPs and Government Entities*, 128 TAX NOTES 316 (July 19, 2010) [<http://www.utexas.edu/law/faculty/calvinjohnson/UBIT-to-the-defense.pdf>]

⁴⁶ Calvin H. Johnson, *Corporate Meltdowns and the Deduction of Credit Risk Interest*, 131 TAX NOTES 513 (May 2, 2011), [http://www.utexas.edu/law/faculty/calvinjohnson/johnson_corporate_meltdown_debt.pdf].

⁴⁷ Calvin H. Johnson, *Corporate Meltdowns Caused by Compensatory Stock Options*, 131 TAX NOTES 737 (May 16, 2011) http://www.utexas.edu/law/faculty/calvinjohnson/meltdown_comp.pdf